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OF HIS GRACE THE

DUKE OF PORTLAND,

RESPECTING

T W O L E A S E S,

LATELY GRANTED BY

The Lords of the TREASURY,

TO

SIR JAMES LOWTHER, BART.

WITH

O B S E R V A T I O N S

On the Motion for a

R E M E D I A L B I L L,

FOR QUIETING THE

POSSESSION OF THE SUBJECT.

And an APPENDIX, consisting of AUTHENTIC
DOCUMENTS.

THE SIXTH EDITION.

L O N D O N:

Printed for J. ALMON, opposite BURLINGTON-HOUSE,
in PICCADILLY. 1768.

THE
 C. A. S. E.
 OF HIS GRACE THE
 DUKE OF PORTLAND
 RESPECTING
 TWO LEASES
 LATELY GRANTED BY

The Lords of the Treasury,
 TO
 SIR JAMES SWINBURNE, BART.



OBSERVATIONS
 ON THE MOTION FOR A
 REMEDIAL BILL,
 FOR CHANGING THE
 POSSESSION OF THE SUBJECT
 AND AN APPENDIX, CONTAINING OF AFFIDAVITS
 DOCUMENTS

THE SIXTH EDITION

LONDON:
 Printed for J. Armon, opposite Burnet's Museum,
 in Piccadilly. 1798.

 THE CASE OF

His Grace the Duke of PORTLAND, &c.

AS I shall have frequent occasion in the course of the following pages to speak of the debates and proceedings in the late parliament, I shall premise, that I consider myself fully at liberty to canvass their conduct, though they were but yesterday in the plenitude of their power, either to redress grievances, if they had so pleased, or to leave them unredressed, which they thought the preferable parts, as any faithful historian would be, who should have occasion to relate events in the pensionary parliament of Charles the second, or any other the most obsequious that can be found in our ancient annals; either in the perogative days of Stuarts and Tudors, or the violent race of Plantagenets. I shall use no ambiguous terms of *certain noble persons*, or a *certain august assembly*, and all the shifty phrases for conveying hints instead of affirming, I shall relate the conduct of the Board of Treasury, leaving it to the public to judge, whether or no they have been guilty of an unjust and violent attack upon private property, to serve the

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purposes

purposes of an election, and I shall leave the late parliament itself, to be handed down to posterity, as having refused redress to their constituents of such grievances, and having denied the proffered security for their fellow-subjects, against future attacks of the same kind. Let the public judge how fit those men are to be trusted with the administration of government, who think it sport to involve the holders of landed property in law-suits with the powers of the crown, after an uninterrupted enjoyment without question of their title, for more than threescore years, and this for no pretence of crime, or other visible cause, than that the tenants of the party thus attacked, oppose, in right of their own private property as free-holders, the election of Sir James Lowther for the county of Cumberland. As to the personal conduct of the members of the last parliament, it behoves us likewise to be fully apprized, not, I fear, that it would have much weight as to the future election of many of them into parliament, should the terrors of government be held out to such refractory constituents, as refuse to return their dependants and favourites. But still it is an advantage always to be apprized of the danger, if at any time hereafter so great a calamity should lie in wait for us, so severe a visitation for the too general profligacy and venality of constituents, as to find the liberty and property of themselves and their fellow-subjects, betrayed by their own profligate and venal delegates.

“ A motion was made” on the 17th of February, 1768, in parliament by Sir George Savile, and seconded by Sir Anthony Abdy, “ for leave to bring in a bill for quieting the possessions of the subject, and for amending and rendering more effectual an
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act of 21st of James I. for the general quiet of the subject against all pretences of concealment whatever."

The purport of this act of 21st of James I. is, that a quiet and uninterrupted enjoyment for 60 years before the passing of the act, of any estate originally derived from the crown, shall bar the crown from any right of suit to recover such estate, under pretence of any flaw in the grant, or other defect of title. This act *at that time*, therefore secured the rights of such as could prove their possessions 60 years, but, by it's very nature, has been continually diminishing in it's effect, and departing from it's principle, since it would now become as necessary to prove a possession of 205 years, as it was then to prove 60. Thus, by a kind of retrograde inversion of the principle, security wastes and weakens, instead of gaining strength, by time and possession: and he who has longest enjoyed, is the most perplexed, and may now be most liable to any vexatious law-suit, that any board of treasury, to serve any clandestine purpose, may at any time please to institute. The proposal to amend that bill, and to render it more effectual towards the quiet of the subject, was simply this, That an undisturbed possession of 60 years (or any such term as parliament should have thought proper) to be taken backwards from *the time being*, should be a security from any suit to be commenced by the crown, or any of it's ministers.

This motion was introduced upon public grounds, and supported upon those principles only, without any personal attack upon the administration or the members of the board of treasury, nay expressly guarded against even the appearance of serving any immediate and personal purpose, or taking it

any pendent recent case : But as an evil conscience will betray itself, and the galled jade will winch, the mere proposal of securing the *future* quiet of the subject, was wormwood at that time to those who laboured under the consciousness of their own past and recent conduct. They made a faint attempt, worthy indeed of themselves, to oppose the salutary principle of this bill, by ransacking the tombs of tyranny for argument, and holding up the relics of prerogative for adoration ; by daring to contend in the face of their country, that it would shake the fundamentals of the constitution even to limit ministers under the crown, from harassing the private subject, with antiquated claims, vexatious suits, and threats of confiscation ; and by such other detestable doctrines as made their own servile dependants shudder to hear. Feeling their weakness on this ground, they left the interest of the public in this great question, for the private cause of endeavouring to colour, misrepresent, and explain away (if they could have done it) the iniquity of their own conduct in the particular act of violence towards the Duke of Portland's property, for which they felt that every impartial man in the kingdom (tho' few indeed are uninterested in the consequences of this precedent) must hold them in abhorrence. But even upon the private ground they succeeded no better than on the public, tho' every circumstance was planned by themselves, cards sent to summon their dependants *pro aris et focis*, and all parties to the trial of accuser, criminal, advocate, and judge united in the person of the ministry. Self-accused even in their own argument, the ministry ; criminal, the ministry ; advocate, the ministry ; judges, the ministry. Yet I will venture to say that that ministry shall bear in their forehead

head from that day, the mark of reprobation which no future times shall separate from their names and memory. And I will likewise venture to hope and to foretell, that the very next parliament shall, to their eternal disgrace, erect a victorious monument *ere perennius*, of private property rescued and secured from the violence, breach of faith, injustice, and profligacy of hireling ministers.

I have no hesitation or scruple to avow, that the cause which I am going to lay before the public is a *private* concern, for what cause can be more interesting to the public, or more universal, than the defence of private property against oppression and the hand of power. The friends to the future peace and quiet of their country, could not have wished for a more favourable incident. The value of the property put into litigation is not inconsiderable in itself, (about 30,000*l.*) but it is far from being the most material part of the noble Duke's inheritance against whom this attack is made. It might have fallen upon some other crown-grantee and have been his all. Such a case might have excited more compassion, yet the evil consequences comprehended under the precedent and principle, have no less tendency against the public quiet, tho' it has happened to a Duke.

I will anticipate one circumstance, viz. that the grant of part of the Duke of Portland's property, was made out by the Treasury to Sir James Lowther without consulting the crown lawyers, or hearing the Duke of Portland's lawyers, as to the validity of his present title and possession. The only reason of this must be, lest the Duke of Portland's title should have been so clearly made out, that they could have had no pretence of granting a lease to
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Sir James Lowther to serve the temporary purposes of the next election, but even here they have failed, having so far over-shot the mark in Cumberland, that the laudable spirit of the freeholders has been disgusted and not terrified at such violent proceedings. I conclude from all this that we shall freely be acquitted by the public from being actuated by motives of spleen or pique or panic, neither being galled by the appearance of the election, nor yet the Duke of Portland under any apprehension of losing the smallest part of his property. As to the expence of the law-suit, there are but few so well able to support it as himself, and none more willing, like Hampden, to go thro' every form and every court of law, whatever be the vexation or expence, having the fullest hope and confidence, that his case may furnish an opportunity of enacting some salutary law, that shall henceforward protect his fellow-subjects from such vexations; not that his ability, his readiness or resolution to stand in the gap for the general quiet of private property, does in any sort extenuate the conduct of the Board of Treasury in this act of violence, but is on the contrary the greatest reproach and aggravation.

As to the proposed bill, the leaders of the late parliament, with all their store of prerogative doctrines, could not look it in the face, but after having exposed the blackness of their secret thoughts, even with a venal majority of three to one on any other question, they did not dare to divide upon this, their most implicit dependants at any other time, having refused to fight under the high flying banners of prerogative set up by them. Being defeated in this attempt, they could only obtain a delay of this bill, after the universal sense of the house (the few ministerial advocates for prerogative excepted)

excepted) was expressed, for taking up the cause in the first session of the next parliament. Even this delay was carried only by a majority of twenty. Many trimmers were so obsequious as to retire, not having the hardiness directly to oppose an immediate redress of so flagrant a grievance, as the invasion of private property for the purposes of an election. There was one piece of ministerial and parliamentary craft, which perhaps every one may not be aware of. When any question is moved and seconded, if there is a division of the house upon it, that question must appear in the votes. The majority not daring to throw out such a question with the votes to confront them in the face of the public, moved for the orders of the day, which according to the forms of the house, avoids any public specification of the motion then in debate. Concealment betrays guilt, and those will ever retire into darkness and subterfuges whose deeds are evil.

*Accipe nunc Danaum Infidias, et Crimine ab uno
Disce omnes.*

I shall now state the transactions and matters of fact as they stand between Sir James Lowther, the Board of Treasury, and the Duke of Portland. The materials by which I am enabled to verify the several parts of this narrative, are, Memorials to the Treasury, with their official replies, all publick and authentick. Besides these, there are letters which have passed between some of the parties to this transaction, they are not by any means to be called private letters, either from any secrecy implied in the matter of them, or the expression. But for the sake of the most scrupulous punctilio, it is not thought proper to publish them without the consent

sent of all parties. I can answer for one side, that the Duke of Portland neither has, nor can have, any objection, to have every letter, every note, every private conversation, and every the minutest transaction or hint whatsoever, brought out into open day-light. Not that the facts alluded to in any of these personal papers, (for I cannot call them private ones) are in any sort different from those which can be authenticated from the publick memorials, but originals written by the parties themselves, during the very transaction, would hold up life and real objects to the publick, of which a narrative can be but the representation.

On the 9th of July 1767, Sir James Lowther presented a memorial (No. 1.) to the Treasury praying a grant of the forest of Inglewood, and soccage of the castle of Carlisle, which the Duke of Portland enjoys under a grant from King William, and which his family have been in quiet possession of, between sixty and seventy years. The memorialist, Sir James Lowther, says he is informed, that the possession of the premises has been for many years withheld from the crown, and that no benefit whatever arises to the crown therefrom, therefore prays a lease of his Majesty's interest therein, for three lives, on such terms as to their Lordships shall seem meet. This memorial the Board of Treasury referred to the surveyor-general of crown lands for his opinion thereon. His report in answer to the Board (No. 2.) dated the 7th of August 1767, says, that the forest of Inglewood, and soccage of Carlisle, were not conveyed by King William's grant to the Earl of Portland, but were still vested in the crown, he therefore recommends a lease of the premises to be granted to Sir James Lowther, for three lives on certain reserved rents,

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viz. 50l. per ann. for the soccage of Carlisle, and 13s. 4d. for the forest, and a third part in both of the rent of such lands, &c. as shall be recovered from the Duke of Portland.

This report of the Surveyor General, who is not a lawyer himself, was returned to the Treasury without having taken the opinion of the Attorney or Solicitor General, though on a point of law, or hearing the Duke of Portland's lawyers in defence of his title. This officer, called Surveyor General, is a person not known in the law, nor in any sort connected with it. He is supposed to be conversant in the knowledge of metes and bounds; ascertaining the value of lands and houses; and the setting of fines, in consequence of such knowledge. Such questions as these, and not points of law, are the proper subjects of reference to him; for he is no more than a keeper of the King's maps, or Land Surveyor; and neither by profession, nor office, has the least connexion with the law. The present Surveyor General is an elderly gentleman, who has lost his sight by age, and is himself incapable of business, which therefore devolves, *de facto*, upon his deputy, Mr. Zachary Chambers. Think then of the Duke of Portland's title, which is to be either defeated, or supported, by a long train of precedents, usages, constructions, grants, surveys, perambulations, verdicts, and innumerable acts of ownership, for three hundred years back (from the time of Richard 3d. when Duke of Gloucester) being decided between the 9th of July, and the 7th of August, without any consultation with the crown lawyers, by Mr. Chambers, the Surveyor's deputy. I would have given any man an hundred guesses, to find out the properest person to decide a great matter of right and property. One might have thought

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of my Lord High Chancellor, (but perhaps he would not have served their turn) or my Lords the Judges, or his Majesty's Counsel learned in the law. No! none of these. The standing counsel to the Board of Treasury, whenever the King's inheritance is called in question, is a Land Surveyor's deputy.

I would not aver, indeed, that they have been entirely destitute of all legal help; for it has been shrewdly suspected, from the utter impossibility of an abstruse question in law being stated by such an officer, that Sir James Lowther's lawyers assisted to draw up that report, in their client's favour, which was presented to the Board, as from the Surveyor General. We shall see, by and by, that the Treasury asserts this report to be binding upon their proceedings, and that they have no power to contravene it. Which end will they take it by? have they, in their capacity as King's ministers, instituted a suit against the lineal possessor of 70 years, upon the advice of a mere Land Surveyor, without consulting the crown lawyers? or, to mend the matter, did they consider the report as drawn up by a lawyer of the party petitioning for the grant; and, for that reason, to be compulsive upon their determinations. There is a maxim in logick, *omne majus continet minus*, and I do not see what can be thought impossible for a Board to do, who have granted away the property of a fellow subject, without hearing him in defence of his title, notwithstanding the most solemn and repeated assurances, that no step should be taken till he had been heard.

But, to return to the narrative: This report in favour of Sir James Lowther, whether drawn up by his own lawyer, or the deputy surveyor, was presented

presented to the Board on the 7th of August, but the Board thought themselves under no obligations to inform the Duke of Portland, whose property was so materially attacked, of their proceedings, tho' his agents attended, day by day, at the Treasury, from the middle of August, to the end of the month, upon a vague report, that something of the kind was in agitation. After many days attendance, a friend of the Duke of Portland, whom his agent knew (a member of parliament) came to the Treasury upon some other business: through his means, the agent applied to the secretary of the Treasury for information; who answered, he could give no papers without orders from the Board. Upon this, the Duke of Portland's friend applied directly to a Lord of the Treasury, who procured copies of what had passed. I will observe here, that, in common justice, where any one's property is attacked, he ought to have the earliest notice to stand upon his defence. The Board of Treasury might have informed the Duke of Portland, at any time, between the 7th of August and the end of the month, for his agent attended constantly; the clerks of the Treasury knew this very well; but even supposing the Board not to know of the agent's attendance, yet the Duke of Portland himself is not so entirely unknown, but that the secretary of the Treasury might have informed him by letter.

On the 2d of September, the Duke of Portland received authentic information (notwithstanding all the silence and reserve of office) of Sir James Lowther's memorial, and the Surveyor General's report, for so it is called. He immediately applied for a suspension of all proceedings in the matter, till he had an opportunity of laying his title before the Board. The Treasury, in the interim, had adjourned

journed till the 9th of October, and, during this vacation, all lawyers at this time of the year being absent from London, the Duke of Portland could make but little progress in preparing his title for the Board. In the beginning of October (viz. on the 8th) *caveats* were entered in the offices of the Chancellor of the Exchequer, and the Auditor of the land revenue for the county of Cumberland, to prevent any lease, or grant, passing to Sir James Lowther by surprize. The proper fees were paid at each office, and the *caveats* received; and, for a greater caution, a *caveat* was entered with the clerk of the patents to the Great Seal. But, in respect of the Board of Treasury, which is not an office of law, the Duke of Portland, instead of a *caveat*, presented a memorial (No. 3) praying to be heard by counsel, in defence of his own title, before the Board proceeded to any act in consequence of Sir James Lowther's application.

This request from the Duke of Portland to be heard in defence of his title, before the Treasury came to any determination against him, produced the following at that time very satisfactory reply, from the Secretary of the Treasury, by order of the Board.

(No. 4.) *Treasury Chambers, Oct. 10, 1767.*

My Lord,

A Memorial of your Grace's to the Board of Treasury, with respect to the forest of Inglewood, was delivered to me yesterday, by your Grace's agent. I did not lose a moment in bringing it before the Lords, I gave it place of all other papers, and, upon its being read, the Duke
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of Grafton, and the other Lords, were pleased to direct me to acquaint your Grace, that if you would be pleased to lay before them a state of your claim, and title to the forest of Inglewood, they would refer it to the Surveyor General, and send him back also, at the same time, his report upon the memorial of Sir James Lowther for his farther consideration. *And I am directed also to assure your Grace, that no step shall be taken towards the decision of the matter in question, till your Grace's title has been stated, referred to, and reported on, by the proper officer, and fully and maturely considered by the Board of Treasury.* I have the honour to be, &c.

GREY COOPER.

I will stop the reader in this place, and recommend him to weigh every word of this letter, with the utmost attention and accuracy, and then tell me, whether there can be found any terms in the whole extent of language, more explicit, or more peremptory than these. Is there the least ambiguity or loop-hole for mental reservation? Let us attend to the request that called out these assurances. The Duke of Portland desires to be heard by counsel, in support of his own rights. Can there be devised any proposition in itself more reasonable and just? *The Treasury assure him, that no step shall be taken, till his title had been stated, referred to, and reported on, by the proper officer, and fully and maturely considered by the Board.* Yet these words were given to the wind. We have heard of ministerial promises broken even to a proverb; and if the Duke of Portland had applied for some favour, or place, or pension, had the promise been conceived

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in ordinary or indefinite terms, I can conceive, that many precedents might be found for the exercise of this ministerial prerogative. But in a plea of strict justice, no more than that the party attacked should be heard before decision, and in a country where not only strict, but liberal justice, is the indefeasible inheritance of the meanest subject; to violate this fundamental law, without remorse, and in contempt of the most solemn engagements that words could express, attested under the hand and seal, and record of office, is a degree of madness, infatuation, and profligacy, beyond example. Some judgment hangs over them; some fate or fatal influence impels them to their ruin. — *Quos Deus vult perdere, prius dementat.*

From this time, the Duke of Portland, trusting to the full assurances from the Board, and, therefore, that his labours would not be thrown away, continued to employ his agents in preparing his title. Their time was fully employed in inspecting, and taking copies of a great variety of evidences, in many of the public offices. But, in order to examine whether the facts stated in the Surveyor's report were truly and impartially stated, it was thought desirable to have recourse to his office, to inspect the surveys, court rolls, and muniments, on which he founded his report. The propriety and justice of this is very apparent; for what presumption can there be, that such a report should be accurately stated, if it be supposed to come from the incompetent hand of a deputy Land Surveyor? and if it be the performance of a lawyer of the adverse party, how can it be considered as impartial? The agents of the Duke of Portland, made no doubt of obtaining permission to inspect the Surveyor's office; accordingly, application was made to Mr.

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Chambers for that purpose; which application, however, he refused to comply with. This refusal of Mr. Chambers to produce the vouchers for the contents of his report, did not at all contribute to lessen the suspicion of the Duke of Portland's agents, that the facts, alledged in the Surveyor's report, might be partially stated, though the Treasury entertained it with such implicit deference.

However, upon this disappointment, the Duke of Portland's agents, thinking they could fully employ their time among other offices, till the meeting of parliament, when he was expected in town, determined so to do, and to apply to him, when he came, to obtain an inspection into the Surveyor's office. Accordingly, on the 25th of November, the very next day after the meeting of parliament, the Duke of Portland met the Duke of Grafton at court, and had a conference with him on the subject. In a few days, the Duke of Portland presented a Memorial to the Treasury, (No. 5.) dated December the second. The Memorial prays (*in regard that all public records ought, and by all courts of judicature are directed to be inspected for the benefit of the parties interested*) an order from the Treasury for the inspection of such surveys, court rolls, &c. as related to the matter in question. On the next day, the Secretary of the Treasury informed the Duke of Portland's agent, that their Lordships had granted the request, as to the inspection of the Surveyor's office, not upon the foundation of right, but as a matter of candour and civility, and that such an order would be drawn up by Mr. Watkins, the clerk, in whose department such business was.

The agent applied to Mr. Watkins, who put him off till the middle of the next week. The order was
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afterwards called for twice; the first time the clerk was not in the way, but the next day appeared. and took his fee for the order, and said, that it had been sent to the Surveyor General; he was applied to for a copy, but would not give one, alledging, that the order sent to the Surveyor General was sufficient. Application was then made at the deputy surveyor's, to know if they had received it. They denied that any such order had been sent, although they had returned an answer to the Treasury two days before, remonstrating against any order for inspection by those who litigate the rights of the crown. Then farther application was made at the Treasury, to hunt out this supposed order which Mr. Cooper had told them, the Lords, out of their great candour and civility, had given instructions for; and in this manner were the agents tossed about, from pillar to post, from the 2d of December till Christmas.

I dare say the reader no more suspects what was passing at the Board in this interim, than the agents did. The Board had indeed given the most solemn assurances, *that no step should be taken towards the decision of the matter in question, till the Duke of Portland's title had been stated, referred to, and reported on, by the proper officer, and fully and maturely considered by the Board.* But notwithstanding this promise, and without the least previous notice, or citation, to the Duke of Portland, to lay the particulars of his title before the Board; and while his agents were preparing his title under instructions from the Board, and were amused with the expectation of an order for inspection; the grants were actually executed (all but the Exchequer seal) before the Duke of Portland, or his agents, were even apprized that the inspection of the Surveyor's office was denied.

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Having specified in what manner the agents were employed, let us now see what has been passing at the Board. Mr. Bradshaw, in pursuance to their Lordships commands, on the 12th of December, sent the *directions* of the Board to the Surveyor, *desiring* him to *permit* the inspection of his office; on the 15th of December, he reports (No. 6.) in answer to Mr. Bradshaw's letter, that the Records in his office are not public, but kept for the King's use only: then he remonstrates against any permission to inspect, by the agents of any persons who avowedly intend to contest the rights of the crown. In the conclusion, he recommends the *shortest way* to try the rights of the crown, by granting the desired leases to Sir James Lowther.

I cannot imagine what put it into the Surveyor's head, to subjoin this last injunction to the Treasury, to take the *shortest way* with the Duke of Portland's property. It was quite foreign to the purport of his report, which ought to have been, merely to assign his reasons for not permitting the inspection of the records. In what light can this insertion, so foreign to the purpose of his report, be considered, but as taking the part of an agent for Sir James Lowther? But if the whole Board of Treasury had been Sir James Lowther's most officious agents, they could not have followed this injunction more implicitly. The Surveyor General cannot be supposed to have known of the solemn promise, that was subsisting from the Board to the Duke of Portland, not to take any step till his title had been *stated, &c. and fully and maturely considered*; but this made no impediment to the Treasury, they took the *shortest way* indeed, which was to decide, without the plague of hearing the evidence; and on the 22d of December, Mr. Cooper wrote to the

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Duke of Portland, (No. 7.) that the Board, upon receiving the Surveyor's second Memorial, refusing the inspection of his office to the agents, and recommending to the Treasury to proceed the shortest way to work, had given orders for the leases to Sir James Lowther, without any more to do: and so, my Lords the Commissioners of the Treasury, present their respects to your Grace, and it is all over: which was the truth of the matter; for the Board adjourned that day for the Christmas holydays, the leases were signed and sealed, and executed by the Lords, *at their own houses*, during the holydays, and delivered to Sir James Lowther ten days before the Board was to meet again. As this was the case, they were safe enough from any memorials or remonstrances against the breach of faith, and injustice of these proceedings, till the grant was too far out of their reach to be recalled, and posted up in hand-bills, to the honour of the King's Ministers, at every hedge-alehouse in Cumberland, with the King's arms affixed.

Two parts of a plot may be going on together, but it is not easy to describe them in the same breath. The poor agents are all this time quite in the dark, though continually attending at the Treasury. They are rummaging for an order to inspect the Surveyor's office, a week after it was all over. I think those who were in the secret, and knew what was passing at the Board, must laugh in their sleeve; and to prolong the entertainment a few days, the Secretary of the Treasury wrote, on the 22d of December, to the Duke of Portland, who was 150 miles off in the country, that all was over, and the grant ordered to Sir James Lowther, instead of having, five days before, when the order to proceed in the leases was signed, informed his agent,
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who was in the lobby the very day and hour when that order was made out. A trusty office truly! where Mr. Watkins, the Clerk, is receiving a guinea fee, to examine the Treasury books (viz. on the 17th of December) for the supposed order for inspection, in the same breath that the Board having superseded that order, is proceeding to decision with the utmost dispatch! Had they stuck to their favourite principle of doing things the *shortest way*, they might have informed the agent of their proceedings upon the spot; and at the very time of their determination, instead of concealing them in a clandestine manner, till the last day before the holydays, and then sending the information three hundred miles round. There can have been no other intention in all this secrecy, but to avoid any memorial from the Duke of Portland's counsel, who are gentlemen of the first eminence in the law, and were then in town; and the consequence was, that the leases were signed and executed by the Lords of the Treasury, and nothing remained but the Chancellor of the Exchequer's seal to be affixed, before either the Duke of Portland's agents, or lawyers, were in the least apprized of the matter.

As soon as information arrived from the Duke of Portland of these proceedings, his agent waited upon the Chancellor of the Exchequer, to prevail upon him to withhold the seal, in consequence of the *caveat* entered at his office. His Lordship said that he was pressed to affix the seal *instantaneously*, that as Chancellor of Exchequer, he considered himself a ministerial officer, and subject as much to an order from the Board of Treasury as any common clerk, in respect to his seal to grants, and therefore could not withhold it. I will venture to say, this is so far from being the case, that the Chancellor of the Exchequer is one of the first

legal officers in the kingdom, and that the very purpose of his being annexed to the Board of Treasury, is, that he may be a *judicial* controul upon the acts of that Board. At least, so says Maddox, in his history of the Exchequer, page 580; *as to the Chancellor of the Exchequer, he seems to have been appointed to be a controul or check upon the Treasurer.* The commissioners are *supposed* to act upon the common principles of justice, they are *supposed* to take the advice of the crown lawyers, they are *supposed* to hear the counsel of the parties concerned, or the parties themselves, (and surely not the less so for having given the most solemn assurances) but in case of any notorious dissatisfaction, the parties have a right to enter a *caveat* before the Chancellor of the Exchequer, and to appeal to him as a *legal* officer of controul, and not as a mere deputy clerk to the Treasury; and if, upon a legal consideration of the matter, the Chancellor of the Exchequer sees sufficient cause, he may, in right of his office, refuse to affix his seal. But to put this out of the question, I can produce a case in point, which happened when the Duke of Newcastle was first Lord of the Treasury, and Sir George Lyttleton Chancellor of the Exchequer. A lease was ordered to be made out by the Board of Treasury in favour of the corporation of Plymouth. The defendant entered a *caveat* at the seal of the Chancellor of the Exchequer. The Chancellor of the Exchequer withheld his seal: the defendant was heard by his counsel, and the lease revoked. I quote no obscure case; the living witnesses to this transaction are, (among others) the Duke of Newcastle, Lord Lyttleton, Lord Mansfield, the Earl of Northington, and Lord Camden, having all been parties to it. Wise men profit by the experience of others; I hope the present

present Chancellor of the Exchequer will be wiser for his own.

It would be absurd to suppose any officer, having the King's seal in his custody, and responsible for the exercise of it, to be subservient, like a mere clerk of the Treasury, besides the very right of his office to receive a caveat, is a proof of his judicial capacity. Who ever heard of a *caveat* entered at the desk of of a common clerk? I hope this plea of the Chancellor of the Exchequer, being merely ministerial as to his seal to grants, will not be established into precedent, as the mutual check of offices upon one another is a principal barrier to the property of the subject, and as such, a precedent would defeat the very main security in future times, against the encroachments, injustice, and insolence, of office. How different the fate of this *caveat* has been, compared with another which has been lately entered at the Privy Seal! the Earl of Chatham's health not allowing him to attend to business, the Privy Seal is put into commission for no other purpose, but to hear counsel upon that *caveat*, notwithstanding the Lord High Chancellor; (whose abilities and integrity to enquire into the subject matter of that *caveat* no one can doubt,) remains in order, after the privy seal, to give the defendants a second hearing.

The Chancellor of the Exchequer, as a *legal* officer, ranks next to the Lord High Chancellor, and takes precedence of the Chancellor of the duchy of Lancaster, and both Chief Justices. It is great condescension in him to act the submissive part of a meer indented clerk; but if he had stood up to the dignity of his office, the Board of Treasury could not have avoided hearing counsel at law, which might perhaps have defeated their designs, of granting away the Duke of Portland's

Portland's property to Sir James Lowther. Nothing surely can bear so little the appearance of justice, as for a Board, without the least smattering of law among the members, without consulting the crown lawyers in a matter of very abstruse law, who are bound, *ex officio*, to give their advice; refusing to hear the defendant's counsel; and during the adjournment of the Board, when no memorial could have access to them, even if the parties attacked had been apprized of their conduct, which was so cautiously kept out of sight. I say, under all these circumstances, what motives of honesty, or justice, could impel them to grant away the property of a British subject, by a clandestine, precipitate, and surreptitious act?

If I were to follow the example of the Board of Treasury, I should content myself with stating one side, and end here, without producing to the public their apology for themselves, as set forth in a letter from one of the secretaries (No. 8.) It was in answer to the Duke of Portland, who had written personally to the principal members of the Treasury, no Board sitting to receive a Memorial. In it he complained of the injustice and precipitancy of their conduct. He represented that, resting secure in the promise he had received, that no steps should be taken, till his claim had been maturely considered: he was actually collecting his title, when by one and the same letter (No. 7.) from the Secretary of the Treasury, he was informed, to his great astonishment, that the Surveyor's General's Office was not to be inspected, and that the grants were ordered to be made out to Sir James Lowther.

I shall now state the substance of this letter, (No. 8.) and consider the particulars in order. The letter says, that

that the Surveyor General declares his opinion, that *the forest of Inglewood is not in grant, but vested in the crown, and recommends and advises, that a lease of the said forest may be granted to Sir James Lowther, for such term, at such a rent, and on such conditions as are therein mentioned.* In ordinary cases, according to the ancient practice and precedents of the Treasury, reports of this nature are immediately approved of upon being read. In this instance, the consideration of the report was postponed, with many expressions of personal regard. I have already spoke of the Surveyor's capacity as a lawyer, to give an opinion in a deep point of law, but in this place he is introduced and acknowledged by the Board in a new capacity, viz. that of recommending and advising them, who are the proper objects to receive the favours of the crown. The first Lord of the Treasury is always supposed to be minister, but here we see the whole Board acknowledging the deputy, Mr. Chambers, as their privy counsellor and referee for the favours of the crown. If one transient ray of common justice had shot across the Board, if it had perchance occurred, that the Duke of Portland, as the lineal and undisturbed possessor for sixty or seventy years, should have had an offer of the lease granted to Sir James Lowther, it must of course have been checked by Mr. Chambers's recommendation of Sir James Lowther as the more deserving man. Again—as managers of the public revenue, under the civil list act, quoted by Mr. Chambers in his report, who sets a low fine, and small reserved rent, in consideration of the trouble and expence to recover the premises; if upon reference or consideration before the Board, the Duke of Portland had found his title defective, it would have been worth

worth his while to have given as much more than Sir James Lowther, as the expences of the suit must amount to. But these stewards of the public prefer the inestimable friend of Mr. Zachary to any such consideration.

What is it but infinite impertinence for a mere office of reference to dictate, in this manner, to the first Board in the kingdom: and if such a report is to be *approved as soon as read*, what security is there against partiality or secret influence, especially in matters of great property. I mean security to the private subject, for the more liable any private office is to corruption, the more readily may it be turned into an engine of tyranny by ministers. Some profligate administration may, in future times, arise, either acting from a general premeditated design of spreading distraction throughout this kingdom, or with the special view of applying the terrors of proscription, in the election of members; preferring the chance, that a parliament, so elected, will be most likely to betray the liberty and property of their constituents, to the hazard of proceeding by open violence. The Surveyor General, as far as relates to his office, must, at all times, be a mere creature of any administration, whenever they shall take any wicked design into their head, being an officer removeable at pleasure. The Treasury may shelter themselves under his sanction, and they may perpetrate the most desperate acts, without exposing themselves, under the guise of a poor, dependent, insignificant, unresponsible object. A secret understanding may subsist between the two parties, and it will behove the Surveyor, for his own sake, to be quick of apprehension, and not to report in favour of any obnoxious party, where the ministry shall

shall aim a confiscation; until the very sound of Surveyor General; shall become as odious in the ears of the people, as the names of Empson and Dudley. I think I do not exaggerate when I say, that all these mischiefs tread on the heels of them, who get instructed in the use of such dangerous weapons, especially when faction, resentment, and party rage, quicken the appetite for revenge.

However, in the case of the Duke of Portland, the Treasury *postponed*, as they say, the consideration of the Surveyor's report, with *many expressions of personal regard, &c.* But how was the matter mended by mere postponing? for they never heard the other side of the question, nor consulted the Attorney General, nor took any of the steps they had engaged for, to consider the case *fully and maturely*. This boasted postponing, was, in truth, no more than lying in wait for some opportunity to finish the whole matter, at one sudden stroke, by giving final orders, without any previous notice to the Duke of Portland, upon the last Board day before their adjournment for the holydays; which effectually barred him from claiming the promise of the Board, to be heard in defence of his title, as the whole matter was over long before the Board met again.

Now comes the capital stroke in their defence, viz. to assign their reason for the violation of a direct engagement and promise; given to the Duke of Portland from the Board on the 10th of October. I will state the words of the promise itself, and the motive assigned by the Board for dispensing with the observance of it, side by side, which will be the fairest way to state it; and if the Treasury had

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followed the same rule, by hearing the Duke of Portland's defence of his title, as well as the attack upon it, we had never come to this crimination.

Oct. 10. 1767.

And I am directed to assure your Grace, that no step shall be taken towards the decision of the matter in question, till your Grace's title has been stated, referred to, and reported upon, by the proper officer, and fully and maturely considered by the Board.

Jan. 8 1768

I laid it (viz. your memorial) before the Board without a moment's delay, and in preference to all other papers, and upon my acquainting the Lord's that I understood from your Grace's agent, that the state of your Grace's claim and right to the forest, might be drawn up and prepared in a short time (a condition which however he had never acquainted the Duke of Portland with before) their Lordships were pleased to order me, to write to your Grace the letter of the 10th of October.

Here is a secret transaction between the Board and the Secretary, that has never appeared yet; a mental reservation is a stale device; here is the most solemn and explicit engagement defeated in a whisper between them. But where is the condition in the promise? Why was it not specified that the Board would hear no evidence, unless produced by such or such

such a day? Why was not a day fixed by the Board, and connected with this promise? Why was not this whisper about a short day, conveyed to the Duke of Portland, in the course of the negotiations subsequent to the 10th of October? Why was he not cited for delay? On the contrary, the Duke of Portland has expressly *not* been charged with neglect or delay, in the answer to his enquiries, whether the Board thought him chargeable in that respect. I go no farther than this, tho', for my own part, I wish some letters that were not official were laid before the public: but I think I have a right to say what is *not* in them.

Take another view of the disposition to justice and equity, in a Board, where the Secretary draws a picture of himself, interceding that the Duke of Portland may be heard in defence of his title. I think I could very fairly draw this comment, or translation, out of Mr. Cooper's letter. My Lord, I do assure you, the Board was in a very ill disposition towards you, notwithstanding all their expressions of personal regard. Sir James Lowther, and perhaps somebody else, would have been incensed to the highest degree, if they had shewn you any pitance of favour; besides, the elections were so near, and their Lordships heads were so full of them, that I began to tremble for you. In this deplorable prospect for your Grace's affairs, I could not refrain from putting in a word in your favour. Perhaps, said I, his Grace will not be a great while in stating his title, and it would at least have the *appearance* of justice; (for you know it would have been their own fault if they had allowed you any more than the *appearance*.) I was timorous,

and afraid of asking too much ; but what did possess their Lordships, all of a sudden, to give you a promise so explicit, so unbounded, without any reservation, and so consistent with every principle of honour, equity, and justice, is as much beyond my comprehension, as it is beyond my power, either to deny, or justify the breach of it.

The very next paragraph of Mr. Cooper's letter represents him, as again under the necessity of interposing his good offices, seeming to fore-see, that the Duke of Portland could have but little to expect, from any candour in the Board, unassisted by his friendly endeavours. In speaking of the memorial to the Board, desiring the inspection of the Surveyor's office, he adds, *I assured your Grace's agent, upon this occasion, that I would use my best endeavours, that this indulgence might be granted to your Grace's request.* Yet I will not omit this opportunity of doing justice to Mr. Cooper's candid and friendly conduct throughout the course of this transaction. I would make an apology *personally* to him, if I thought there wanted any, for the liberty that I take in commenting upon his *official* letters ; but every one will consider, the sophistry, reservations, and double dealing, which are unavoidable in so lame a cause, as merely *official* ; and I will venture to say, that those who know him best, will least think him capable of *personally* taking part, in any transaction inconsistent with the punctilios of a man of honour.

But to proceed. The Surveyor General, it is said, gave such reasons for not permitting the inspection of his office, as were satisfactory to the Board.—Upon this head, I do allow, if that office is not publick, nor an office of record, the Duke of Portland had
not

not a claim, *ex debito iustitiæ*, to the inspection. But the Treasury will not stop here, they contend farther, viz. that the precedent of permitting an ancient crown grantee to defend his title out of those very materials, upon which his grant was originally made, and is now attacked, *will be a prejudice to the King's interest on future similar occasions, and create great inconvenience in the future management of the land revenue.* That is to say, in plain English: Let any crown grantee have, *bona fide*, ever so good a title, yet if, by length of time, or any casualty, he has the misfortune to lose the proof of his title, although there shall be lying in the Surveyor's office sufficient proof of his right, yet the King shall recover such estate, notwithstanding the real right of the possessor, while the Surveyor General knowingly suppresses the evidences of the true right.

I have heard of seditious libels tending to alienate the affections of the subject. In what class then shall this assertion be ranked? That it is the interest of the Crown to rob the private subject of his just property, because he may have lost his title deeds, the Crown's officer having a power to secrete the proof of his right, let it be ever so clear; and perhaps, that very same officer, having trumped up a false or partial report in favour of some informer, to involve any crown grantee whatsoever, that shall be obnoxious to the administration for the time being, in a law-suit, without producing the vouchers for the proof of his report. But it is going farther off than we need, to consider what future evils may arise out of this detestable principle. Look at the instance before us. The Treasury have instituted a law-suit against the Duke of Portland, for an estate in value about 30,000*l.* upon no other suggestion

gestion whatsoever, than that Mr. Zachary Chambers has reported unfavourably to his title, and has refused to produce the vouchers.

Upon the inspection of the Surveyor's office being denied, the apology proceeds to say, that *it not appearing to their Lordships, from any thing alledged on the part of your Grace's agents, that the state of your claim to the inheritance of the forest in question (which the Board had, by its former order of the 10th of October, undertaken to refer to the Surveyor General) could be prepared without such inspection*, the Lords ordered the grant to Sir James Lowther, &c. The matter conveyed in this part might be cut very short; *it not appearing to their Lordships, from any thing alledged, &c.* These words seem intended to convey, that they had, at least, made some enquiry, and that the agent had alledged nothing, on the Duke of Portland's part, to suspend their decision; but this was so far from being the case, that no such enquiry was made by the Board, either on the day when the leases were ordered to Sir James Lowther, or in any part of the transaction, directly or indirectly. How then could the Lords of the Treasury think themselves entitled, in point of justice, to such an inference, not having made any enquiry about the matter? But perhaps it may be thought (for I know such reports have been industriously spread) that the Treasury waited a *reasonable* time, after the Duke of Portland, or his agents were informed, that they were not to inspect the Surveyor's office; and upon no steps being taken by them towards offering their defence, the Treasury concluded, that they had dropped their point; and therefore proceeded to order the
grant

grant to Sir James Lowther. I must still insist, that the plainest way, without any negative inferences, would have been for the Board to have asked the Duke of Portland, whether he had withdrawn his claim to be heard or no, and what I think any Board, meaning to act with honesty and impartiality, would have done. However, supposing them to have waited a *reasonable* time, what would any one guess to be a *reasonable* time, to conclude, because the Duke of Portland did not obtrude his title, of his own accord, without any citation or day fixed by the Board, that he had therefore no evidence, among his family papers, or the public Records relating to crown lands, of weight enough to ballance the partial report of an ignorant Land Surveyor. But I will not perplex the reader with a question, where his labour will be so entirely thrown away; for, whatever might have been *reasonable*, they gave the Duke of Portland no time, or previous notice, at all.

It has been shewn, how studiously the Board avoided to inform him, or his agent, that the inspection of the Surveyor's office was denied, till they sent him information, by the very same post, that they had decided the grant in favour of Sir James Lowther; and *that* upon the very last Board day before Christmas. Here I repeat my voucher. Mr. Cooper, in his letter of the 22d of December, says, *the Duke of Grafton commands me to present his respects to your Grace, and to acquaint you, that upon reading a report of the Surveyor General (of which I have the honour to send your Grace a copy,) &c. &c. the Lords found themselves obliged, by the course and practice of office, to direct*

a grant to be made to Sir James Lowther, &c. &c.
By this indubitable testimony from Mr. Cooper, it may be seen, that the information of both these points got to the Duke of Portland together, when all was over, and the Board adjourned.

But observe how dexterously this thing was conducted, to defeat the Duke of Portland from laying his title before the Board. The Surveyor's report, denying inspection, was dated the 15th of December, and the Board sat a week after that. If the Duke had been immediately informed of it, and that the leases were to be ordered out, there would have been time for him to present a memorial to appoint a day, either before or after the holydays; which memorial nothing could have stoppt, but delaying the information till the last Board before the holydays; by which trick (as has been expressed before) the members of the Board proceeded without interruption, during the Christmas, to go through the finishing forms of the grant; whereas, if the several steps had been taken, out of holyday time, at so many public Boards in the face of day, and with the knowledge of the parties interested (as any honest act might have been) this grant could not have passed through the necessary stages, without the defendant laying in his claim, in point of justice, and by promise of having his title fully and maturely considered. By this piece of dexterity to suppress the Surveyor's report denying inspection, till the leases were ordered, and out of the reach of any memorial to stop them, let any impartial man give his judgement what the intentions of the Board were.

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Let us descend a little farther into particulars, and take a specimen of most exquisite conduct in carrying a clandestine point. The board having determined to grant the leases, a warrant was sent on the 17th of December, to the surveyor general, to make out the *constats*; that is to say, the particulars of the lands, &c. descriptively to be inserted into the leases. This was finished by the 21st, as appears by the date of the *constats*. On the 22d, the Lords sent a *fat*; that is, a warrant to the clerk of the pipe, to make out the draught of leases according to those *constats*. All subsequent forms were capable of being executed (as they really were) during the holidays. Mark then how nicely the thing was calculated. The 17th of December was on a Thursday. If the board had informed the Duke of Portland of their proceedings by that post, he could have sent notice to his agents by the Monday following at the latest (sooner if by express) and have presented a memorial on Tuesday the 22d of December, the last board day before the holidays. Had their Lordships wrote on the 18th, a memorial might still have been ready by the 22d. Nay they would not even trust the 19th, which left but three days for a memorial to be drawn up, after a journey of three hundred miles round; but on the 22d, the day of adjournment, when the deed was done, and the perpetrators thought themselves out of reach, they informed him, *with every possible mark of attention and respect*, of their mischievous intentions, that they had cut a great gash in his rent-roll, but (unfortunately) their decisions were not final in law. In all this, there is such manifest study to lie concealed, and to

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avoid detection, that I will call it *an overt-act* of concealment.

We are almost got to the end of this ministerial apology, which, I am sure, the reader will be as glad of as myself, for poking into the dark and vicious recesses of concealment, equivocation and treachery, is nauseous to the moral sense, and an office no more to be coveted, than the clerk of the arraigns to the Old Bailey.

Mr. Cooper concludes by saying, that the Duke of Grafton signed the order with the greatest reluctance. Then, in God's name, why did he sign it at all, without advising with the crown lawyers, hearing the Duke of Portland's defence, or even informing him? The demur of any other Lord might not have stopt the proceedings of the board, but, without question, if the first Lord of the Treasury had declared his reluctance till the promise to the Duke of Portland, of maturely considering his title had been fulfilled, his single suspense might have prevented all that is now complained of.

*Talibus insidiis, perjuriq; arte Sinonis,
Perdita res——*

We are at last got to the end of this ministerial apology, which finishes the narrative of facts. I need say nothing to assure the public that I have stated them truly, because any one may see the original vouchers at length in the appendix. As to facts of less note, viz. such as passed between the clerks of the treasury, and the Duke of Portland's agents, the main points of the question do not turn upon them. But suppose such a point as this should be called in question; whether the
agent

agent paid a fee at the treasury for a supposed order to inspect the surveyor's office on the 17th of December, which was two days after the report from the surveyor to the board finally denying the inspection; the evidence to prove this is from the attorney's books, who paid the guinea upon that day. Or suppose they should equivocate about signing the leases at their private houses — To be sure they might be signed at a tavern, or at Sir James Lowther's, or any where else, but it was private, and not at a board, for the letters patent were dated the 28th of December 1767, according to Sir James Lowther's own advertisement, and the last board was on the 22d. I bar all these petty-fogging tricks, because I know the runners of administration have been, and will be, very assiduous, to propagate any falsehood just for the day. We had a story not long ago most confidently asserted, to palliate the conduct of the treasury. It was said, that the whole grant to Sir James Lowther was but a trifling estate of seventy pounds a year. Let any one consider whether Sir James Lowther would think it worth his while, to take an estate of seventy pounds a year, paying fifty pounds reserved rent to the crown, and a third part of the yearly rent, over and above that fifty pounds *per annum*, of what he shall recover after a law-suit with the Duke of Portland. *Sic de similibus*. But the public will require an account at their hands, of the notorious features in this transaction. There is an instinctive judgment in the impartial public, which no minister can equivocate them out of, a sort of national jury, whose verdict Guilty is a formidable sentence.

Methinks I hear a plain blunt man, who fears it may be his turn next, say, Did not
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they grant away the Duke of Portland's estate without hearing him? Answer me that. Did not they promise to hear him, and did not they break their promise? Answer me that. Did they consult the attorney-general, or any of the crown lawyers? Answer me that. What honest motive could they have to grant away any man's estate without hearing evidence or law? I should be glad to know that. Was it not done at the eve of an election while a contest for Cumberland was depending, and given to Sir James Lowther, one of the candidates? What could that be for but to intimidate the freeholders? for if the estate was the King's, what right had Sir James Lowther to it more than any other man? Did not they lay their heads together with a man called the surveyor-general? and upon his report alone, grant away the Duke of Portland's property without examining the surveyor's vouchers by the King's counsel, or letting any body else see them? O! but they say that is *legal*, because his office is not public but a private one. So much the worse; that a man's estate should be granted away upon the secret suggestion (without proof) of a private inquisitorial office; and to mend the matter, the treasury think it *legal* too to decide without hearing evidence or law. At this rate, any man's estate that votes against ministry may be granted away to some minister's favourite, or some favourite's favourite, for the reward of voting with them. These evils, if they are *legal*, require a speedy remedy before they spread.

When any question is debated touching public grievances, or any remedy is proposed to prevent such for the future, the administration are instantly in arms, and range themselves, as it were by instinct,

instinct, in battalion, to repel what they consider as their enemy, let it be ever so friendly to the public; as if the general good of the community, and the particular objects of administration, were in their own natures, inconsistent and incompatible. Is it then confessed, that the vexation and disquiet of the subject is their view? Why else should they be so strenuous to stifle a law, in the very first step, for quieting the possessions of the subject? But perhaps they had not consulted some superior oracle, who controuls, not only their actions, but even their words and thoughts. I cannot feel respect enough for these pageants that are put into the place of ministers, to be angry with them; God help them! they scarcely know who it is that controuls them, much less to what ends they are conducted. What are they but babies learning to lisp prerogative and *nullum tempus*.—But mark by their babbling what lessons they have been taught in their nursery.—There shall be no quiet for the subject.—We will hear of no such law. *Prerogative is a precious jewel of the crown.* The subject shall have no place of security to lay his head, or whereon to rest the sole of his foot. Terror, search, vexation, persecution are the *precious jewels of the crown*.—Thanks to them for giving us this warning; but if their preceptor should chastise them for their tell-tale folly, I cannot pity them. I do not ask where their instructor lives who teaches these maxims, or who he is, for I shall not put myself under his tuition; but I will tell these boys where they did *not* learn them. They did not receive them from one, whose glory is that he was born a Briton. Shall then the ministers of a Prince, who esteems the liberty of the subject, and the security of their property,

property, the *only jewels of his crown*, shall they stand between, and deprive us of that peace and quiet, which was not denied to the subject, in the most vexatious times of prerogative, by the founder of the Stuart line?

Hear them again.—*Nullum tempus occurrit regi.* By this law, which shall be maintained in its utmost severity, we will provide an ample and never-failing revenue for the crown, by proscriptions, confiscations, and the whole train of legal rapine.—What! are we but in the beginning of things? Is that violent act, which we thought to proceed merely from an impotent rage at an election; is it, I say, but the flash of the priming? Is it but the first act of a pestilent system, that is already planned with endless malice afore-thought? The private English subject, who has so lately contributed millions upon millions, without repining, to purchase national honour and security—honour abroad, and peace at home—to him do you offer this consolation; that giving and granting is over for ever, but vengeance and plunder are substituted in their place? The soldier who returns to his native home, loaded with his country's honour, flattering himself to enjoy some rest from the toils of war in his paternal retreat; thinking to beat his spear into a plow-share, and his sword into a reaping hook—will it staunch his wounds, will it administer comfort to the achings of his heart, to greet him with the news; that all which he can now call his own, his house, gardens, parks, meadows, woods, patrimony, mansion, with every thing so situate, lying, being and thereunto belonging, is marked for confiscation; that he may repose his head upon his laurels, but that his
lot,

lot, and the reward of his labours, is to be poverty and exile?

*Tunc miles tremulus posita tulit arma tiarâ,
Et ruit ante aram summi Jovis, ut vetulus bos,
Qui domini cultris tenue et miserabile collum
Præbet, ab ingrato jam fastiditus aratro.*

One should hardly have conceived in whose heart or head such horrid plans of tyranny and vexation could be devised, if the untutored folly of these mock ministers had not blurted it out; but we are told that this of confiscations is but part of a magnificent plan for resuming forest claims, and reviving the forest laws. Perambulate, level encroachments, trample down the vineyard and the waving corn, expel the cottager, who, with two hundred years mistaken labour, has made the forest bring forth food for the use of man. Spare not his little ewe lamb, for that too has grazed feloniously on the royal demesnes. Search, validate the dormant claims of the crown; the resources must be made good, they must be restored by such windfalls as it shall please God to send, in the lapse of time, and by the destruction of family writings. We have two hundred and five years to range in, the civil wars have intervened; fire, deaths, attorneys, executors, and their executors, may have destroyed or mislaid the parchment: here is rich plunder for the public; fall on, spare not, no not one; royalists, Hampdens, sons of the revolution *nullo discrimine*. Of all the wonders that I ever yet have met with, it is the most astonishing, to have heard, in open parliament, a deliberate proposal, in cold blood, of raising a revenue from a concerted system of search

search for confiscations ; not for any crimes committed, or any in contemplation ; but as the ungracious recompence for all the glorious and immortal virtues of those men, who have heretofore rescued this kingdom from oppression. Plunder the posterity of those heroes, on whom was heretofore bestowed the reward of their valour and virtues with unregretted munificence. We have been too liberal. We have rewarded the supporters of liberty, and of the protestant cause, with too prodigal a hand ; we have purchased these baubles at too dear a price. Resume, confiscate, replenish the public coffers with the spoils of patriotism. *Si aerarium ambitione exhausserimus, per scelera replendum erit.*

APPENDIX.

APPENDIX.

NUMBER I.

JULY 9, 1767.

*To the Right Hon. the LORDS COMMISSIONERS of
his MAJESTY'S TREASURY.*

The MEMORIAL of Sir JAMES LOWTHER, Bart.

SHEWETH,

THAT his Majesty, in right of his crown, is seized of the forest of Inglewood, in the county of Cumberland, and of the manor of the foccage of the castle of Carlisle, with the appurtenants belonging to the said forest and manor.

That the memorialist is informed that the possession of the above premises has been for many years withheld from the crown, and that no benefit arises to the crown therefrom.

Therefore prays a lease of his Majesty's interest therein to himself, his heirs and assigns for three lives, on such terms as to their Lordships should seem meet.

NUMBER II.

August 7, 1767.

THE Surveyor General reports, in answer to the foregoing memorial, his opinion as to the title of the lands in question. The former part is merely a recital of technical terms in law, relating to the Duke of Portland's private property, and belongs only to a court of law. It concludes in these words:

That, with regard to the memorialist's request of a lease of the premises remaining in the crown, he was of opinion, a lease of his Majesty's interest in the forest of Inglewood, and of the rents, royalties and services, might be granted to him for 99 years, determinable on three such lives as he should nominate, reserving to his Majesty, his heirs and successors, the yearly rent of 13s.

4d. and one third of the yearly profits of what should be recovered; and to pass with fine in regard to the trouble and expences he might be put to in recovering the premises, and bringing them in charge for the benefit of the crown after so long an intrusion.

And that the lease of the manor of the soccage of Carlisle, with the courts, royalties, and lands, might be granted to him for a like term, reserving the ancient rent of 50l. per annum, and one third of the yearly rent of what shall be recovered above the rent of 50l. per annum, which would be agreeable to the Civil List Act.

N U M B E R . I I I .

October 19, 1767.

To the Right Hon. the Lords Commissioners of his Majesty's Treasury.

The MEMORIAL of the Most Noble WILLIAM HENRY CAVENDISH, Duke of Portland,

Sheweth,

THAT your memorialist has been informed, that Sir James Lowther, Bart. lately presented a memorial to your Lordships, praying a grant of a lease of the forest of Inglewood, in the county of Cumberland, and several other premises in the same county for three lives, on such terms as to your Lordships shall seem meet.

That the said forest and premises were upwards of 70 years ago granted from the crown to one of your memorialist's ancestors in fee, who, with your memorialist, have ever since been in the actual possession thereof.

Your memorialist therefore hopes your Lordships will be pleased at present to postpone the consideration of the said memorial, and grant him leave to be heard by himself or council against the prayer thereof, that he may manifest his right and interest in the aforesaid premises.

N U M B E R . I V .

Treasury Chambers, October 10, 1767.

MY LORD,

A Memorial of your Grace to the Board of Treasury, with respect to the forest of Inglewood, was delivered to me yesterday by your Grace's agent; I did not lose

lose a moment in bringing it before the Lords; I gave it place of all other papers; and upon its being read, the Duke of Grafton, and the other Lords, were pleased to direct me to acquaint your Grace, that if you would be pleased to lay before them a state of your claim and title to the forest of Inglewood, they would refer it to the Surveyor General, and send him back also at the same time his report upon the memorial of Sir James Lowther for his further consideration; and I am directed also to assure your Grace, that no step shall be taken towards the decision of the matter in question till your Grace's title has been stated, referred to, and reported on by the proper officer, and fully and maturely considered by the Board of Treasury.—

I have the honour to be, &c.

GREY COOPER.

NUMBER V.

December 2, 1767.

To the Right Hon. the Lords Commissioners of his Majesty's Treasury.

The MEMORIAL of the Most Noble WILLIAM HENRY, Duke of Portland,

Sheweth,

THAT your memorialist, and those under whom he claims, have been seventy years and upwards in the quiet and uninterrupted possession of the forest of Inglewood, and the manor of the fockage of the castle of Carlisle, in the county of Cumberland, and of divers lands, tenements and hereditaments within the said forest and county under a grant from the crown.

That Sir James Lowther, Bart. in June last, in a secret underhand manner, without the least notice or intimation given to your memorialist, applied to your Lordships by memorial, praying a lease of the said forest, manor and premises; and, upon the 9th day of July last, your Lordships were pleased to make an order, referring it to the Surveyor General to examine and report his opinion thereon.

That the Surveyor General, without calling on your memorialist to support his title, or giving your memorialist the least notice or opportunity of being heard,

made his report upon 7th August last, (in less than a month after the order of reference) advising your Lordships to grant the lease desired on the terms therein mentioned, and thereby refers to divers ancient surveys, court rolls, and other instruments.

That your Lordships having adjourned soon after making the said order of reference, and your memorialist's council and agents, during the recess of business, being retired into the country, your memorialist presented a memorial to your Lordships, desiring your Lordships would be pleased to postpone the consideration of the said memorial, and give him leave to be heard by himself or council against the prayer thereof, that he might manifest his title and interest in the aforesaid premises, which your Lordships were pleased to grant.

That your memorialist's agent, upon the 20th October last, applied to the Surveyor General for leave to inspect the surveys, court rolls, and other instruments referred to by his said report, or at least such of them as were in his possession, when Zachary Chambers, Esq; the Surveyor's deputy took time to consider of such request, and directed your memorialist's agent to attend him again on the 22d October, when he declared the Surveyor General had given him directions not to produce any papers. That the Surveyor General's office was not a public office, and therefore not obliged to produce records for inspection, and that he could not suffer any to be inspected without a superior order.

Therefore, and in regard, all public records ought, and by all courts of Judicature are, directed to be inspected for the benefit of the parties interested, your memorialist prays your Lordships' directions to the Surveyor General, to permit your memorialist's agents to inspect all the surveys, court rolls, and other muniments and writings in his custody relating to the matters in question, and that your memorialist may be at liberty to take copies thereof, or of such parts thereof as he shall be advised, that your memorialist may be enabled to lay the merits of his case before his council, and manifest his title to your Lordships.

NUMBER VI.

May it please your Lordships,

I Have received your Lordships' directions by letter from Mr. Bradshaw, dated the 12th instant, desiring me to suffer the agents of his Grace the Duke of Portland to inspect the court rolls and other muniments and writings relating to the forest of Inglewood, and the manor of the socage of the castle of Carlisle, in the county of Cumberland, in my custody, it having been suggested to your Lordships that I had an objection to his Grace's request.

I beg leave to inform your Lordships, that, about three weeks ago, an agent of the Duke of Portland applied to me to inspect the surveys, and other evidences in my office, which are mentioned, or referred to in my report to your Lordships on the memorial of Sir James Lowther, bearing date the 7th day of August last (of which they had obtained a copy); and on my enquiring to what use or purposes he wanted them, he said, that he apprehended he was entitled to the inheritance of the forest aforementioned, and should dispute the right of the crown thereto, on which he was acquainted by my direction, that I should not suffer them to be inspected, as the surveys and evidences in my custody were not public records, but kept there for the king's use only; and I have heard nothing since relating to that matter till yesterday, when I received the letter abovementioned.

As to the propriety of the Duke's request, I humbly apprehend, that the permitting the king's deeds and evidences to be inspected by the agents of any persons, who avowedly intend to contest the rights of the crown, would be a bad precedent, and may be detrimental to his Majesty's interest on future occasions; and I think the shortest way will be to try the right of the crown, which Sir James Lowther is ready to do at his own expence, if your Lordships shall think fit to grant him the desired leave.

All which is humbly submitted to your Lordships' wisdom.

ROBERT HERBERT, Surveyor General.

December 15, 1767.

NUMBER

NUMBER VII.

Treasury Chambers, December 22, 1767.

MY LORD,

THE Duke of Grafton commands me to present his respects to your Grace, and to acquaint you, that, upon reading a report of the Surveyor General (of which I have the honour to send your Grace a copy) and upon taking into consideration a former report of the same officer, dated in the month of August last, relating to the forest of Inglewood; in which he is clearly of opinion, that the lands in question are not included in the grants made to the Earl of Portland by King William, and that they are now vested in the crown; the Lords found themselves obliged, by the course and practice of office, to direct a grant to be made to Sir James Lowther (pursuant to the recommendation of two successive reports of the Surveyor General) upon his undertaking to try the right of the crown at his own expence, and upon his conforming to the other conditions mentioned in the said report; I am directed to assure your Grace, that the Lords received and entertained your Grace's memorials relative to this matter, with every possible mark of attention and respect, but that in all cases where it appears that the title to the inheritance of the King's estate is contested, the board is guided by the opinion of the Surveyor General, in whose custody all the evidences and records relating to the crown lands are deposited, and to whom all matters and questions of this nature are referred. My Lords have at the same time the satisfaction to know, that no act of their Board, done in necessary compliance with the rules and duties of their office, can decide any legal right, or affect any claim which your Grace may have to the inheritance of the lands or forest in question.

I have the honour to be, &c.

GREY COOPER.

NUMBER VIII.

Copy of Mr. Cooper's letter to the Duke of Portland.

MY LORD,

January 8, 1767.

AS I have but too much reason to apprehend that your Grace's last letter to the Duke of Grafton, relative to the forest of Inglewood, which has given him
much

much real concern; was, in a great measure, occasioned by my not having explained to your Grace so fully as I ought, the grounds and motives on which the Board appeared to me to have proceeded during the course of this whole transaction; I most humbly beg your Grace's permission to lay before you, more at large than I did in the last letter which I had the honour of writing to you, what I conceive to be the real state of the circumstances of the case. The Surveyor General, in his first report, dated in August last, declares his opinion, that the forest of Inglewood is not in grant, but actually vested in the crown, and recommends and advises that a lease of the said forest may be granted to Sir James Lowther, for such a term, at such a rent, and on such conditions as are therein mentioned. In ordinary cases, according to the ancient practice and precedents of the Treasury, reports of this nature are immediately approved of upon being read, and leases are ordered in conformity to such opinions. In this instance, the consideration of the report was postponed, with many expressions and marks on the part of the Duke, and the whole Board, of the greatest personal regard for your Grace.

On the 9th of October last, being the day on which the Lords met after the adjournment, your Grace's first memorial was delivered to me: I laid it before the Board without a moment's delay, and in preference to all other papers; and upon my acquainting the Lords, that I understood, from my conversation with your Grace's agent, that a state of your Grace's claim and right to the forest might be drawn up and prepared in a short time; their Lordships commanded me to write to your Grace the letter dated the 10th of October, a copy of which you was pleased to send inclosed to the Duke of Grafton. From the time of this order all proceedings of the Board were suspended, and the whole matter slept till it revived by your Grace's memorial; in which you pray my Lords' directions to the Surveyor General to permit your agents to inspect the surveys and records in his office, and to take copies thereof, or such parts thereof as you should be advised.

I assured your Grace's agent, upon this occasion, that I would use my best endeavours that this indulgence might be granted to your Grace's request. Upon reading this memorial, the Board were of opinion, that the
records

records and papers in the custody of the Surveyor General were not public records, but merely the evidences and the deeds of the estates of the crown, and that no person had a right *ex debito justitiæ* to inspect or take copies of such records, without a special case made for that purpose: But it being suggested that the Surveyor General had no objection to the inspection desired by your Grace, the Board ordered that your Grace's agents might be permitted to make such inspection, and to take copies of papers and records, in case the Surveyor General had no objection thereto. Upon this order the Surveyor made his second report, a copy of which accompanied the last letter which I had the honour of writing to your Grace on this subject: His objections to the inspection were so strongly marked and expressed, that the Lords were of opinion that they could not direct it to be allowed, without the hazard of great inconvenience and prejudice to his Majesty's interest on future similar occasions and applications; and it not appearing to them, from any thing alledged on the part of your Grace's agent, that the state of your claim to the inheritance of the forest in question, (which the Board had by its former order of the 9th of October undertaken to refer to the Surveyor General) could be prepared without such inspection, the Lords found themselves under the necessity of yielding to the usage of precedents of office, in ordering a grant to be made to Sir James Lowther, in pursuance of the clear opinion and repeated recommendations of the Surveyor General. Upon the whole matter, I think it a debt due to truth and justice to assure your Grace, that the Duke of Grafton shewed the greatest reluctance and unwillingness to make any order which might carry even the appearance of affecting your Grace's claim to the lands in question, and that he withheld his assent so long as he thought he could do it, without establishing a precedent which might create great inconvenience in the future management of the land revenue, and prejudice the interests of the crown committed to his care.

I have the honour to be, &c.

GREY COOPER.

NUMBER IX.

EXTRACTS FROM THE CONSTATS.

County of Cumberland.

All that forest, called the forest of Inglewood, with the rights, members, and appurtenances, &c. &c. &c.

In like manner,

All that the mannor of the foccage of the castle of Carlisle, with all and singular the rights, members, &c. &c. &c.

Then follows to each,

This constat is made forth and rated by virtue of a warrant from the Right Hon. the Lords Commissioners of his Majesty's treasury, *bearing date the 17th day of this instant December*, in order to a lease of the premises, with their appurtenances, to be passed under the Exchequer seal to Sir James Lowther, &c. &c. &c.

Examined by me, ROBERT HERBERT,
Surveyor General,
Dec. 21, 1767.

This voucher is inserted to prove, that the definitive order of the Board to proceed in the leases was signed on the 17th of December, according to the reference in the surveyor's report, annexed to each constat, although the Board suppressed this order from the Duke of Portland's knowledge, till after they had adjourned for the holidays.

H

F I N I S.

NUMBER IX.

EXTRACTS FROM THE COMSTATS.

County of Cumberland.

All that forest, called the forest of Inglewood, with
the rights, members, and appurtenances, etc. &c. &c.

In like manner,

All that the manner of the castle of the castle of
Carlisle, with all and singular the rights, members,
etc. etc. etc.

Then follows to each,



This contract is made by virtue of a
warrant from the Right Hon. the
of his Majesty's Privy Council, in the year
of his Majesty's said Majesty, in order to the
this is that Deed, in order to the
with their appurtenances, to be held under the
chapter, etc. to the James Stewart, etc. etc. etc.

Testified by me, ROBERT HERBERT,
Surveyor General,
1700.

This voucher is intended to prove, that the
five order of the Lord to proceed in the
signed on the 17th of December, 1700, to the
treasure in the University of Oxford, annexed to each
that, although the Lord's signature and seal are
lack of England's knowledge, it is not the
found for the Holiness.

H

